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FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
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Market Entry and Regulation)
of Foreign-affiliated Entities)

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IB Docket No. 95-22
RM-8355
RM-8392

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF AIRTOUCH COMMUNICATIONS

AirTouch Communications, Inc. ("AirTouch") is filing these Comments in support of the Commission's proposals to broaden opportunities for foreign communications carriers to provide services in the U.S. AirTouch is the nation's largest stand-alone wireless telecommunications company, and one of the world's largest providers of wireless telecommunications services. These Comments will address those issues raised in the Notice of Proposed Rulemaking released February 17, 1995 ("NPRM") regarding waivers for foreign ownership of common carrier radio licenses under Section 310(b)(4).¹

I. Introduction

Liberalization of the waiver process will further two important Commission goals: to promote effective competition domestically and to encourage governments to open their markets to greater participation by U.S.

¹ AirTouch does not have a position the issues raised in the NPRM regarding the appropriate standard for entry by foreign carriers under Section 214 to provide facilities-based international carriage. Similarly, we do not address the issue of foreign ownership of broadcast licenses under Section 310(b), other than to support consideration of separate waiver standards for common carrier and broadcast licenses.

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telecommunications entities. Licensing policies should be focused on achieving these goals in a consistent and reliable fashion. Making the Commission's waiver criteria clearer and more consistent will encourage other governments to adopt licensing criteria which are similarly open, objective, and nondiscriminatory.

The Commission should adopt its proposal to formally incorporate an evaluation of comparable market access for U.S. companies in processing waivers of the 25% foreign ownership limits established by Section 310(b) for common carrier licenses. Given the competitiveness of the commercial mobile radio services ("CMRS") market, and the benefits of global telecommunications services, AirTouch urges the Commission to deny waivers only where U.S. companies are demonstrably excluded from comparable participation in the relevant CMRS market. A presumption that U.S. markets should be open to foreign investment is consistent with a literal reading of the statute, and is the best means of promoting competition, efficiency and choice in the delivery of telecommunications services. Such a policy will provide the Commission and the U.S. with the maximum ability to leverage the desire of foreign companies to enter the U.S. market as a means to liberalize the foreign ownership policies of other countries.

AirTouch is involved in cellular, paging, and vehicle location services in the United States and participates in international ventures in many of the world's more developed markets, including Japan, Germany, Sweden, France, Spain, Portugal, Belgium, Italy, South Korea, and Thailand. AirTouch's continuing

success as a global competitor in the provision of wireless services is dependent upon the continued openness of foreign markets to U.S. participation. Many countries are in the early stages of privatizing their telecommunications industries and sowing the seeds of a fully competitive mobile services market. The opportunity for U.S. service providers to market their abilities overseas is linked to these breakthrough licensing activities.

U.S. foreign ownership policies, including the Commission's historically conservative interpretation of its waiver authority under Section 310(b), have been perceived as highly restrictive by foreign governments with whom AirTouch does business. This perception provides little incentive for other countries to further open their markets absent some indication that such actions will be reciprocated. Restrictive ownership policies both here and abroad artificially reduce the number of qualified licensees with no substantial offsetting public benefits.

U.S. firms are particularly well-situated to contribute to the growth of wireless markets overseas. Based upon the unqualified success of the competitive CMRS market in the U.S., U.S. companies are in demand as strategic partners because of their pioneering technologies, proven systems for network management and customer service, and operational and marketing experience.

Expanded foreign investment opportunities in the U.S. provides direct benefits to our economy as well. Foreign investment provides job growth, more consumer choices, and implementation of the world's best practices.

Consumers benefit from the increased choices and wide dissemination of licenses in a fully competitive market.

II. Effective market access should be the primary consideration and must be based on specific market segments

Use of the proposed effective market access standard is an appropriate vehicle for achieving the Commission's goals. As noted in the NPRM, the Commission has used it already in evaluating applications involving foreign investors under Section 214.² Formal incorporation of a market access test in the Commission's waiver process will provide greater consistency in granting licenses to global partnerships, allow for greater certainty on the part of foreign companies seeking to increase equity participation in U.S. markets, and lead to more symmetric and open regulations overseas.

Given the value of open markets to all consumers, comparable market access should be the primary consideration in granting Section 310(b)(4) waivers. Factors such as the percentage of foreign ownership above the statutory benchmark and the overall influence of a foreign investor on the licensee should be relevant only within the context of a reciprocity standard. As long as the investment opportunities flow both ways, the public interest will be served by any level of foreign investment above the statutory 25 percent standard.

The NPRM seeks comment on the relevance of national security considerations in making a public interest determination on waivers for common

² NPRM at Para. 39.

carrier radio licenses. As the Commission notes, the national security concerns which gave rise to Section 310, first incorporated into law in 1927, related to risks from foreign dominance and espionage in American broadcast radio.³ The passive nature of common carrier transmission provides no opportunity for propaganda or foreign control over content that could be a concern to some. The vast proliferation of competitive common carrier services has increased our national security by reducing our dependence on a limited number of providers of public switched telephone service. Ultimately, our national security is strengthened by the globalization of telecommunications, which results in a more efficient, competitive infrastructure both domestically and internationally.⁴ For these reasons, the “friendliness” of a country to the U.S. should not be a determinative factor regarding the Commission’s waiver policies.

The state of competition in the CMRS market today also eliminates the need for an application-specific evaluation of market competitiveness in granting Section 310(b) waivers.⁵ The amount of spectrum available to CMRS providers has dramatically increased with the recent allocation of 120 MHz for licensed broadband PCS, and the authorization of new, wide-area SMR systems. License flexibility for all CMRS providers to use alternative technologies further promotes diversity and innovation. In light of this dynamic and rapid expansion,

³ NPRM at Para. 101.

⁴ As noted in the NPRM, given the plethora of service providers: “No single licensee which is owned in part by a foreign corporation could take over the wireless or wireline services in the United States in a time of war.” NPRM at fn. 16.

⁵ NPRM at Para. 96.

all CMRS license applicants enter a fully competitive market, with no ability or opportunity to dominate or control the industry.

The Commission notes that Section 310(b) waivers are often required at the same time Section 214 authorizations are also needed when foreign carriers seek to enter the U.S. market.⁶ Although this is correct, the Commission should nevertheless separately evaluate the specific market the foreign investor seeks to enter when making its public interest determination. That is, Section 310(b) waiver determinations allowing increased foreign ownership of particular commercial mobile radio services should be based on evaluation of the opportunities for U.S. participation in the same specific commercial mobile radio service in the home country of the foreign applicant. A market-specific approach is most appropriate because many foreign applicants will be engaged in many separate, although related, telecommunications services, such as international carriage, resale, enhanced services, wireless communications, and equipment sales and service. A holistic approach to evaluating market access would result in needless complexities and delays, discouraging the opening of some market segments while attempting to open others. As long as comparable opportunities for U.S. companies exist for a particular market segment in a foreign country, the state of liberalization of that country's other service markets should not be dispositive.

⁶ NPRM at Para. 95.

It has been AirTouch's experience that foreign access and increased competition in one market has a beneficial impact on opening competition in other market segments. For example, in several countries in which an AirTouch consortium has acquired a license to provide competitive cellular service, it was originally prevented from provisioning its own backhaul networks.⁷ The presence of cellular investors from markets already fully competitive in the provisioning of backhaul capabilities, including U.K. and U.S. entities, contributed to the successful effort to change the policies limiting competition in that market segment.

III. The time is ripe for adoption of more cohesive and procompetitive waiver policies under Section 310(b)

AirTouch strongly supports immediate FCC action to improve the process for 310(b) waivers. AirTouch has actively lobbied Congress to liberalize Section 310(b) in light of the benefits of more open telecommunications markets. Such statutory changes are not needed, however, for the Commission to establish a more open market process under the language of Section 310(b) or pursuant to its broad authority "to make available . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service."⁸

First, there is no certainty that Congress will enact the far-reaching telecommunications reform legislation currently under debate. Nor is it certain

⁷ These networks, using microwave links or private lines, are needed to connect cell switch traffic among cell sites and to and from the PSTN. Self-provisioning reduces costs and enhances a licensees' control over network efficiency and quality.

⁸ Section 1 of the Communications Act of 1934, as amended.

whether changes to foreign ownership policy will remain a part of a final bill. In any event, the statutory changes being proposed are aimed at liberalizing the statutory cap, a direction consistent with the philosophy of the NPRM. Under its current authority to serve the public interest, the Commission should use all available means to encourage open market access in order to promote a more competitive world market. Prompt policy revisions are needed to incorporate and stimulate the rapid developments taking place all over the world, to privatize ownership, create competitive licensing procedures, and encourage open network architectures.

In evaluating a waiver request, the Commission should deny a license only if the public interest would be clearly harmed by waiving the 25 percent ownership cap. That is, the presumption should be that the public interest will be served by granting a 310(b) waiver. Such an interpretation of the statute is consistent with a literal reading of Section 310(b)(4) which provides for limits on foreign ownership if the Commission finds that the public interest will be served by the refusal of the license award.

This shift would underscore that open markets generally serve the public interest, and that the burden of proof in limiting foreign ownership on public interest grounds falls to those who would close U.S. markets. The public interest factors considered by the Commission in processing license applications should foreclose foreign ownership only in exceptional cases, where in fact the home country is demonstrably closed to similar U.S. participation.

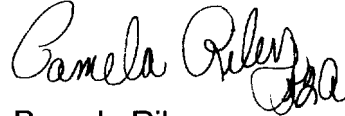
By concentrating on the openness of the foreign market for a given commercial mobile radio service, and presuming that such markets are sufficiently open, the Commission's process for granting Section 310(b) waivers should be predictable and expeditious. Brief timeframes for processing waiver applications are important, as lengthy delays undermine investor confidence and stall the growth of the industry. Ongoing consultations with the U.S. State Department and U.S. Trade Representative should be scheduled to provide for rapid assessments of a given country's commitment to granting licenses to U.S. investors. Factors to be taken into account should include the formal and informal ownership policies of the home country, evidence submitted by interested parties, and representations made by foreign governments. By taking such actions, license ownership decisions by the Commission should encourage, recognize and reward efforts underway to liberalize ownership policies elsewhere.

IV. Conclusion

AirTouch encourages the Commission to adopt expansive changes in its waiver policy to permit foreign ownership of common carrier radio licenses above the statutory benchmark 25 percent set forth in Section 310(b). Symmetry in ownership policies should not be the goal. Rather, reciprocity should be used as a tool to open fully markets worldwide. By embracing an open entry policy, except in cases where U.S. investors are specifically excluded from participating

in that same service in an applicant's home market, the Commission will provide a major, positive influence on the development of more open markets worldwide.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Pamela Riley". The signature is fluid and cursive, with the first name "Pamela" being more prominent than the last name "Riley".

Pamela Riley
Director Public Policy

One California Street, 28th Floor
San Francisco, CA 94111

(415) 658-2058

Kathleen Q. Abernathy
Vice President, Federal Regulatory

David A. Gross
Washington Counsel

AirTouch Communications
Suite 800
1818 N Street, N.W.
Washington, D.C. 20554
(202) 293-3800

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